

**Remarks:**

1. Objections and Rejections:

Claims 3, 25, and 26 stand rejected under 35 U.S.C. § 112, ¶2, as allegedly being indefinite. Claims 1-5, 7-11, 14-16, 18-24, 27, 29-33, 36-38, and 41-53 stand rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by U.S. Patent No. 4,539,898 to Bishop et al. (“Bishop”). Moreover, claims 6, 28, and 40 stand rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Bishop in view of U.S. Patent No. 5,910,206 to McNamara, and claims 17 and 39 stand rejected under 35 U.S.C. § 103(a), as allegedly being rendered obvious by Bishop in view of U.S. Patent No. 5,776,530 to Davis et al. (“Davis”). Applicants respectfully traverse.

2. 35 U.S.C. § 112, ¶2

Claims 3, 25, and 26 stand rejected as allegedly being indefinite because the phrase: “further predetermined temperature” lacks antecedent basis. Applicants are amending claims 3 and 25 to provide antecedent basis for the phrase: “further predetermined temperature.” Therefore, Applicants respectfully request that the Examiner withdraw the indefiniteness rejection of claims 3, 25, and 26.

3. 35 U.S.C. § 102(b)

Claims 1-5, 7-11, 14-16, 18-24, 27, 29-33, 36-38, and 41-53 stand rejected as allegedly being anticipated by Bishop. Claims 1, 23, and 41 are independent claims in the above-captioned patent application.

The Office Action asserts that “in regard to the claimed operation of the controller based upon the received sensor temperatures, such is functional and provides no structural limitation. Applicant’s use of the phrase ‘adapted to’ only requires the claimed structure to be capable of performing in the recited manner. It is clear that the controller [of Bishop] can be ‘adapted to’ compare temperature signals and operate the heater accordingly.” Office Action, Page 3, Lines 1-5.

a. Independent Claims 1 and 23

Applicants are amending independent claim 1 to remove the “adapted to” language. Applicants respectfully submit that independent claim 1 clearly claims that the controller must deactivate the means for heating when the temperature of the vessel wall is greater than or equal to a predetermined temperature and/or when the difference between the temperature of the vessel wall and the temperature the cooking medium (or air within the cooking medium) is greater than or equal to a predetermined temperature difference. Independent claim 23 includes corresponding method limitations.

Bishop merely describes that a heat sensor 94 is positioned in a vat 82 such that heat sensor 94 is covered with a cooking oil 96; a temperature probe 160 is used to monitor the temperature of vat 82; and when the temperature of vat 82 drops to a predetermined amount below a value set on a temperature setting means 162 a switch means will close **to apply power to** a heater unit 156. See, e.g., Bishop, Column 8, Lines 59-63. As such, Bishop does not disclose or suggest **deactivating** the means for heating when at least one of the predetermined conditions from independent claims 1 and 23 is satisfied. Therefore, Applicants respectfully request that the Examiner withdraw the anticipation rejection of independent claims 1 and 23.

b. Independent Claim 41

Applicants are amending independent claim 41 to remove the “adapted to” language. Applicants respectfully submit that amended independent claim 1 clearly claims that the controller must deactivate the means for heating when the temperature of the vessel wall is greater than or equal to a predetermined temperature.

Bishop merely describes that temperature probe 160 is used to monitor the temperature of vat 82, and when the temperature of vat 82 drops to a predetermined amount below a value set on a temperature setting means 162 a switch means will close **to apply power to** a heater unit 156. See, e.g., Bishop, Column 8, Lines 59-63. As such, Bishop does not disclose or suggest **deactivating** the means for heating when the temperature of the vat is greater than or equal to a predetermined temperature. Therefore, Applicants respectfully request that the Examiner withdraw the anticipation rejection of independent claim 41.

c. Claims 2-5, 7-11, 14-16, 18-22, 24, 27, 29-33, 36-38, and 42-53

Claims 2-5, 7-11, 14-16, 18-22, 24, 27, 29-33, 36-38, and 42-53 depend from independent claims 1, 23, and 41, respectively. Therefore, Applicants respectfully request that the Examiner also withdraw the anticipation rejection of claims 2-5, 7-11, 14-16, 18-22, 24, 27, 29-33, 36-38, and 42-53.

4. 35 U.S.C. § 103(a)

Claims 6, 28, and 40 stand rejected as allegedly being rendered obvious by Bishop in view of McNamara, and claims 17 and 39 stand rejected as allegedly being rendered obvious by Bishop in view of Davis. Claims 6, 17, 28, 39, and 40 depend from independent claims 1 and 23, respectively. “If an independent claim is non-obvious under 35 U.S.C. 103,

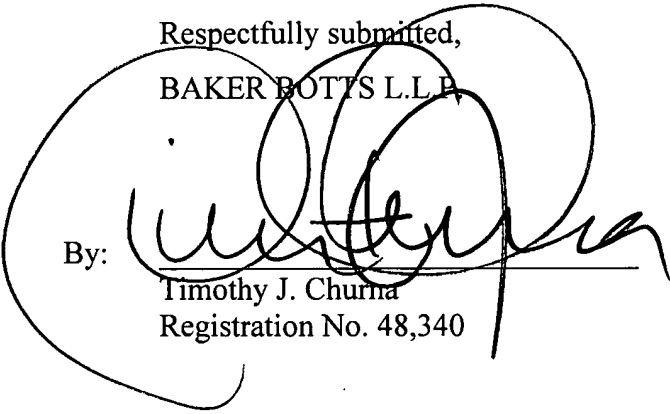
then any claim depending therefrom is nonobvious.” MPEP 2143.03 (citations omitted).  
Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejection of claims 6, 17, 28, 39, and 40.

**Conclusion:**

Applicants submit that the above-captioned patent application, as amended, now is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that the prosecution of this application may be furthered by discussing the application, in person or by telephone, with Applicants' representative, we would welcome the opportunity to do so. Applicants believe that no fees are due as a result of this responsive amendment. Nevertheless, in the event of any variance between the fees determined by Applicants and the fees determined by the U.S. Patent and Trademark Office, please charge or credit any such variance to the undersigned's Deposit Account No. 02-0375.

Respectfully submitted,  
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